

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DELON SHANDELL GRANT,

Defendant-Appellant.

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UNPUBLISHED

October 14, 2003

No. 239040

Genesee Circuit Court

LC No. 01-008372-FC

Before: Murphy, P.J., and Cooper and C. L. Levin\*, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to life in prison for the first-degree murder conviction, and a consecutive two-year term for the felony-firearm conviction. We affirm.

Defendant contends that the trial court erred in denying his motion for a mistrial based on the pathologist's testimony at trial that the shooting of the victim was an "execution style shooting." We review a trial court's decision to deny a motion for a mistrial for an abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). Absent a showing of prejudice, reversal is not warranted. *People v Wells*, 238 Mich App 383, 390; 605 NW2d 374 (1999).

The trial court found that the pathologist improperly testified to his own personal opinion regarding the type of shooting, but denied defendant's motion for a mistrial because the trial court had sustained defendant's objection, struck the challenged testimony and instructed the jury to disregard the pathologist's statement. The trial court found that these actions cured any defect. The trial court did not abuse its discretion in denying defendant's motion for mistrial. The pathologist's characterization was momentary, what he said was stricken and the jury was instructed to disregard the statement.

Defendant next contends that by eliciting testimony from the prosecution's chief witness that the shooting was "murder," the prosecutor denied defendant a fair and impartial trial. We disagree.

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\* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

During redirect examination of the chief witness for the prosecution, the following exchange occurred:

*Q.* A man lost his life. Right?

*A.* Yes, sir.

*Q.* What we keep calling an incident it's actually a murder. True?

*A.* Yes, sir.

Defendant timely objected, and the trial court sustained the objection, struck the question and response, and instructed the jury that whether the shooting was a murder was for the jury to decide, not the witness.

While the prosecutor's question was improper, when viewed in light of the facts of this case, the prosecutor's elicitation of the witnesses's concurrence that the shooting was murder did not deprive defendant of a fair trial. At the time the exchange between the prosecutor and the witness took place, the witness had already testified that he, the defendant, and the victim were sitting and watching television when defendant, all of a sudden, fired two bullets into the victim's head and neck. The witness testified that they had all been getting along fine before the shooting, and that he did not know why the defendant shot the victim. In light of this testimony, the witness's acquiesce in the prosecutor's argumentative characterization of the shooting as a murder, was not so shocking or of such an impact as to deprive defendant of a fair trial.

The trial court instructed the jury at the close of proofs that the lawyers' statements and the lawyers' questions to the witnesses were not evidence, and that testimony stricken during the trial is not to be considered in reaching a verdict.

Affirmed.

/s/ William B. Murphy  
/s/ Jessica R. Cooper  
/s/ Charles L. Levin